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**FISCAL IMPACT STATEMENT**

**LS 7432**

**BILL NUMBER:** HB 1639

**NOTE PREPARED:** Feb 9, 2005

**BILL AMENDED:** Feb 8, 2005

**SUBJECT:** Film production tax incentives.

**FIRST AUTHOR:** Rep. Lutz J

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill authorizes the use of state and university owned property free of charge as locations for making motion pictures.

It provides that transactions involving tangible personal property are exempt from Sales Tax if the person acquiring the property acquires it for the person's direct use in the direct production of a motion picture or audio production.

The bill also provides that costs associated with the purchase of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions are qualified investments for purposes of the capital investment tax credit statewide and the Hoosier Business Investment Tax Credit.

The bill provides a state tax credit for expenditures that are made in Indiana and directly related to the production and postproduction of a motion picture or audio production. It also provides that certain tax credits related to the production of motion pictures or audio productions are transferable.

The bill authorizes the Department of Workforce Development to fund job training in the film production industry from the state Workforce Development Fund. It excludes obscene motion pictures from various incentives.

**Effective Date:** July 1, 2005; January 1, 2006.

**Explanation of State Expenditures:** (Revised) *Motion Picture and Audio Production Credit:* This bill would

increase the administrative burden of the Indiana Film Commission insofar as the Commission would be required to certify the eligibility of motion picture production companies' expenditures that are eligible for the Motion Picture and Audio Production Credit. The impact of this provision on the Commission will be contingent upon the number of certification requests received by the Commission. It is presumed that the Commission could absorb the additional administrative burden using existing staff and resources.

*Hoosier Business Investment Tax Credit:* The expansion of the Hoosier Business Investment Tax Credit to include qualified expenditures related to motion pictures or audio productions could have minimal administrative impact on the Indiana Economic Development Corporation, the Department of State Revenue, and the State Budget Agency.

*Department of Workforce Development:* The bill authorizes the Department of Workforce Development (DWD) to fund job training in the film production industry from the State Workforce Development Fund. The DWD uses the Workforce Development Fund to provide a readjustment program for workers who have been terminated as a result of plant closings and layoffs, and who are unlikely to return to previous occupations or industries. During the FY 2004-FY 2005 biennium, the Fund received an annual General Fund appropriation of about \$2.5 M.

*Department of Administration:* The bill requires the Department of Administration to adopt policies and procedures for making state-owned property available free of charge as locations for making motion pictures. The Department could absorb any costs associated with this provision.

*Transfer of Credits:* The Department of State Revenue (DOR) would incur some administrative expenses as a result of allowing taxpayers to transfer tax credits. The bill requires the DOR to adopt rules to administer the tax credit transfer process. The DOR also may have to revise tax forms, instructions, and computer programs for purposes of tax credit transfers. The DOR's current level of resources should be sufficient to implement these changes.

**Explanation of State Revenues:** (Revised) *Sales Tax Exemption:* The bill would exempt transactions directly involving motion picture and audio equipment from the state's Sales Tax if the equipment is directly used in the direct production or post production of a film, video or audio, television series, commercial, music video, or corporate production in Indiana. Based on adjusted industry data, it is estimated that the provision could reduce Sales Tax revenue by \$390,000 in FY 2006 and by \$940,000 in FY 2007. Since the exemption becomes effective on January 1, 2006, the impact in FY 2006 is limited to the collections that would have been received in the last half of FY 2006.

Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

*Motion Picture and Audio Production Tax Credit:* The bill establishes the Motion Picture and Audio Production Tax Credit. The credit is equal to 30% of the qualified expenses incurred in a taxable year while producing feature length films, video or audio, television series, commercials, music videos, or corporate production that would be eligible for the credit. To receive the credit, taxpayers must receive certification from the Indiana Film Commission that the expenses qualify for the credit. The Commission must certify the taxpayer's expenditures as eligible for the credit if the Commission determines that the expenditures were both made in Indiana and directly related to the production of a motion picture or audio production. Based on

adjusted industry data, it is estimated that the bill could potentially reduce Individual and Corporate Adjusted Gross Income Tax revenue by \$1.1 M to \$2.7 M beginning in FY 2007. This range should be considered the upper limit of the credit's impact.

Since the tax credit begins in tax year 2006, the fiscal impact would begin in FY 2007. The credit may be taken against a taxpayer's Adjusted Gross Income (AGI) Tax, Insurance Premium Tax, or Financial Institutions Tax liability. Revenue from these taxes is deposited in the state General Fund. However, 86% of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund. The tax credit is not refundable, but taxpayers may carry the credit forward, sell or transfer the credits.

*Capital Investment Tax Credit:* The bill extends the nonrefundable Capital Investment Tax Credit to costs associated with the purchases of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions. The credit is equal to 14% of the qualified investment. The impact of this provision is currently indeterminable. There is no cap on the total amount of credits that may be granted.

Under current law, capital investment that qualifies for the credit include: (1) the purchase of new manufacturing or production equipment; (2) the purchase of new computers and related equipment; (3) costs associated with the modernization of existing manufacturing facilities; (4) on-site infrastructure improvements; (5) the construction of new manufacturing facilities; (6) costs associated with retooling existing machinery and equipment; and (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry. These investments, and the qualified motion picture investments included in the bill, must be certified by the Indiana Economic Development Corporation as being eligible for the credit. Unused credits may be carried forward by a taxpayer for up to three years. This bill also allows these credits to be sold, assigned, conveyed or transferred to another taxpayer.

Since the changes to the tax credit are effective beginning in tax year 2006, the fiscal impact would begin in FY 2007. The credit may be taken against a taxpayer's Adjusted Gross Income (AGI) Tax, Insurance Premium Tax, or Financial Institutions Tax liability. Revenue from these taxes is deposited in the state General Fund. However, 86% of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund.

*Hoosier Business Investment Tax Credit:* The bill extends the Hoosier Business Investment Tax Credit to include qualified expenses used to make motion pictures or audio production during CY 2006 or CY 2007. The credit will only be available for CY 2006 and CY 2007, (due to the current expiration date of this credit), however, unused credits may be carried over for up to nine years. This credit could potentially reduce revenue from the Adjusted Gross Income (AGI) Tax, the Insurance Premiums Tax, and the Financial Institutions Tax by an indeterminable amount.

The Indiana Economic Development Corporation Board is authorized to award a taxpayer (an individual, corporation, partnership, or other entity with a tax liability) a nonrefundable tax credit for expenditures on qualified motion picture costs that the Board determines will foster job creation and higher wages in Indiana. The investment tax credit is equal to 30% of the taxpayer's qualified investment. The credit amount can be used in the taxable year in which the investment is made and the nine taxable years that follow. The credit amount that the taxpayer may claim in the taxable year in which the investment is made is equal to the lesser of: (1) 30% of the qualified investment or (2) the taxpayer's state tax liability growth. The state tax liability growth

is the difference between the taxpayer's state tax liability in a taxable year minus the greater of: (1) the taxpayer's state tax liability in the most recent prior taxable year in which part of a credit was claimed or (2) the taxpayer's tax liability in the taxable year immediately preceding the taxable year in which the investment was made. The taxpayer may carry forward any remaining credit amount for the next nine taxable years. In each of these taxable years, the credit amount claimed may not exceed the difference between the taxpayer's tax liability in that taxable year and the taxable year in which the qualified investment was made. The tax credit is limited to the amount of qualified investment that is directly related to expanding the workforce in Indiana; and the tax credit may not be awarded in relation to jobs that a taxpayer is relocating from one Indiana site to another.

This bill also allows the credits which qualify for expenses used to make motion pictures or audio production to be sold, assigned, conveyed or transferred to another taxpayer.

In 2004 (the first year for the Hoosier Business Investment Tax Credit), the EDGE Board (under prior law) approved credits totaling about \$331.7 M for 54 qualified investment projects.

*Transfer of Credits:* The bill provides that a taxpayer who qualifies for the Capital Investment Tax Credit, the Hoosier Business Investment Tax Credit (as it qualifies for expenses related to motion pictures or audio production), or the Motion Picture and Audio Production Tax Credit may transfer, sell, convey or assign these credits to the extent that the credit exceeds the qualified taxpayer's tax liability.

The bill would reduce state Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, and Financial Institutions Tax liabilities of individual and corporate taxpayers that obtain unused tax credits from other individual and corporate taxpayers. Assuming unused credit amounts would eventually be utilized, this change has no long-run fiscal impact. Rather, the change likely provides for more timely use of credits obtained by taxpayers whose tax liabilities are not sufficient to exhaust the credits in one year. The credit transfer provision could potentially lead to a significant short-term increase in the use of tax credits beginning in FY 2006 and FY 2007.

The bill allows a taxpayer to transfer sell, assign, convey, or otherwise transfer tax credits to another taxpayer beginning in tax year 2006. A taxpayer may transfer only the tax credit amounts that exceed the taxpayer's tax liability. Since the bill is effective beginning in tax year 2006, the fiscal impact could potentially begin in FY 2006 if taxpayers adjust their quarterly estimated payments.

#### **Explanation of Local Expenditures:**

#### **Explanation of Local Revenues:**

**State Agencies Affected:** Department of State Revenue; Department of Workforce Development; State colleges and universities; Department of Administration; Indiana Economic Development Corporation; State Budget Agency; EDGE Board.

#### **Local Agencies Affected:**

**Information Sources:** State Budget Agency; Economic Research Associates, *Economic Impact Analysis of Indiana's Film and Video Production Industry*, March 2003; Internal Revenue Service; Claudia Fuentes, Department of Commerce, 317-234-0616.

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